

Honolulu, Hawaii

FEB 11 2020

RE: S.B. No. 2195

S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2020
State of Hawaii

Sir:

Your Committee on Hawaiian Affairs, to which was referred
S.B. No. 2195 entitled:

"A BILL FOR AN ACT RELATING TO LANDOWNER LIABILITY,"

begs leave to report as follows:

The purpose and intent of this measure is to provide
liability protections for public and private landowners who
expressly allow access and use of their land to practitioners of
native Hawaiian traditional and customary practices.

Your Committee received testimony in support of this measure
from the Department of Land and Natural Resources, Office of
Hawaiian Affairs, Center for Hawaiian Sovereignty Studies,
Partners in Development Foundation, Ka Lāhui Hawai'i Political
Action Committee, and thirteen individuals. Your Committee
received testimony in opposition to this measure from the Hawaii
Association for Justice and one individual. Your Committee
received comments on this measure from the Department of Attorney
General.

Your Committee finds that article XII, section 7, of the
Constitution of the State of Hawaii requires the State to protect
and enforce the reasonable exercise of native Hawaiian traditional
and customary rights. Native Hawaiians are legally entitled to
engage in the reasonable exercise of these rights and associated
practices on both publicly- and privately-owned lands that are



less than fully developed, regardless of whether they are granted express permission by landowners.

However, notwithstanding the rights of native Hawaiian cultural practitioners, public and private landowners and property managers with liability concerns may refuse to accommodate practitioners' access to sites and resources on lands under their ownership or control. As a result, in order to exercise their constitutional right to reasonably engage in native Hawaiian traditional and customary practices, practitioners often risk potential conflict with landowners or property managers and face potential citation and even arrest. This measure provide liability protections to public and private land owners, which will encourage the accommodation of native Hawaiian practitioners' traditional and customary rights on public and private lands.

Your Committee acknowledges the concerns of Hawaii Association for Justice but makes mention that in its testimony the Attorney General did basically support the measure with comments. However, the Attorney General did not raise the concerns raised by the Hawaii Association for Justice so hopefully, going forward, those concerns can be overcome.

Your Committee has amended this measure by:

- (1) Clarifying that article XII, section 7, of the Constitution of the State of Hawaii requires the State to protect the reasonable exercise of native Hawaiian traditional and customary rights;
- (2) Specifying that native Hawaiians are legally entitled to engage in the reasonable exercise of these rights and associated practices on both publicly- and privately-owned lands that are less than fully developed, regardless of whether or not they are granted express permission by landowners, as set forth in State v. Pratt, 124 Hawaii, 329 (2010) and 127 Hawaii 206 (2012);
- (3) Clarifying that notwithstanding the rights of native Hawaiian cultural practitioners, public and private landowners and property managers with liability concerns might refuse to accommodate practitioners' access to

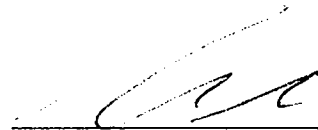


sites and resources on lands under their ownership or control; and

- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2195, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2195, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Hawaiian Affairs,

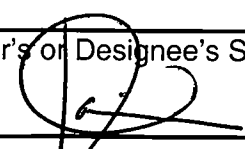


MAILE S.L. SHIMABUKURO, Chair



The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Hawaiian Affairs
HWN

Bill / Resolution No.:* SB 2195	Committee Referral: HWN, JDC	Date: 1/28/20		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
SHIMABUKURO, Maile S.L. (C)	✓			
KAHELE, Kaiali'i (VC)	✓			
IHARA, Jr., Les	✓			
KEOHOKALOLE, Jarrett				✓
FEVELLA, Kurt	✓			
TOTAL	4			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes